



PATENT

Attorney Docket No.: 25629/12

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): David Schlossman *et al.* EXAMINER: Elena Tsoy
SERIAL NO.: 10/791,424 GROUP ART UNIT: 1762
FILED: March 1, 2004 CONFIRMATION NO.: 5398
FOR: *HYBRID COATED COSMETIC POWDERS AND METHODS OF
MAKING AND USING SAME*

CERTIFICATE OF MAILING

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By:

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March 8, 2007
Date

MAIL STOP AMENDMENT
Commissioner for Patents
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RESPONSE TO RESTRICTION REQUIREMENT UNDER 35 U.S.C. 121

Sir:

In the Restriction Requirement, dated January 8, 2007, Applicants were required to elect a single invention for prosecution on the merits from one of the following groups:

Group I: Claims 1-20, 41, and 42, drawn to a coated powder, classified in class 428, subclass 403.

Group II: Claims 21-40, drawn to a process of providing a hybrid coating on a cosmetic powder, classified in class 427, subclass 212.

Group III: Claims 43-47, drawn to a cosmetic product, classified in class 428, subclass 403.

Applicants were also required to elect a species of Group I from one of the following:

i) hydrophobic and lipophilic properties (Claims 4, 5, 14, 41)

ii) hydrophobic and lipophobic properties (Claims 4, 14, 41)

The Examiner also required Applicants to elect species from Group II. Applicants were required to elect a species based on the order of adding functionalized silicon compound from i) adding them simultaneously (Claims 22, 24-25) and ii) adding them sequentially[sic] (Claim 23). Additionally, the Examiner required Applicants to elect a species from Group II between:

i) hydrophobic and lipophilic properties (Claims 25, 29)

ii) hydrophobic and lipophobic properties (Claims 25, 29, 37, 39)

I. Restriction.

Applicants provisionally elect, with traverse, Group I. Applicants also elect, with traverse, species (ii) of Group 1 directed to hydrophobic and lipophobic properties.

According to Section 803 of the M.P.E.P., restriction may properly be required between patentably distinct inventions if (1) the inventions are independent or distinct as claimed; and (2) there is a serious burden on the Examiner if restriction is not required. Group I and Group II are directed to the same product and do not require a separate field of search.

Specifically, Applicants respectfully submit that there will not be a serious burden on the Examiner if restriction between the claims is not required because regardless of the claims prosecuted, the field of search for each of the groups and each identified species will substantially overlap, if not be identical to the other. A separate field of search is shown to exist only when one of the distinct subjects can be searched in places where no pertinent art to the other subject exists. In this case, however, there is no indication that a separate field of search is required for the present application. Group II, which is drawn to a process of providing a hybrid coating on a cosmetic powder makes the coated cosmetic powder of Group I. There is also substantial overlap between the species. The search would be the same for the species hydrophobic and lipophilic properties (Claims 4, 5, 14, 41) and ii) hydrophobic and lipophobic properties. Thus, Applicants respectfully contend that there will not be a serious burden on the Examiner if restriction is not required and would respectfully request that this restriction requirement be withdrawn.

CONCLUSION

The claims remaining within the application are believed to patentably distinguish over the prior art and to be in condition for allowance. Early and favorable consideration of this application is respectfully requested.

Respectfully submitted,



Date: March 8, 2007

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